

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 368.10, the City Development Board gives Notice of Intended Action to adopt amendments to Chapter 7, “Voluntary Annexation,” and Chapter 10, “Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval,” Iowa Administrative Code.

The current rules outline notification requirements for a city’s request for Board approval of a voluntary annexation application; describe Board proceedings on voluntary annexation requests; outline the calculation of land area included without the consent of the owner; describe Board proceedings on involuntary boundary adjustment requests; and outline the election procedure if a petition for an involuntary boundary change is approved by the City Development Board Committee.

The proposed amendments intend to clarify how public land and railway right-of-way are treated in annexation requests; create procedures for boundary adjustments between cities by petition and consent pursuant to 2010 Iowa Acts, House File 2376; and conform the rules to recent legislative changes in 2010 Iowa Acts, House File 2376.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on Tuesday, October 12, 2010. Interested persons may submit written comments to Marie Steenlage, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3064; or E-mail marie.steenlage@iowa.gov.

A public hearing will be held Tuesday, October 12, 2010, from 2 to 3 p.m. in the Iowa Tourism Room, First Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code chapter 368 as amended by 2010 Iowa Acts, House File 2376.

The following amendments are proposed.

ITEM 1. Amend paragraph 7.2(2)“g” as follows:

g. Certification that the city has complied with the notice requirements of Iowa Code section 368.7(3), including proof of mailing of the application and affidavit of publication of the required public notice, and, if railway right-of-way is included or public land is included without the written consent of the agency with jurisdiction over the public land, certification of notice to the owner as required by Iowa Code section 368.7(1). For purposes of calculating the required period of notice, “business days” shall include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34).

ITEM 2. Amend subrule 7.8(1) as follows:

7.8(1) General rule. Territory comprising railway right-of-way or territory comprising not more than 20 percent of the ~~total land area of a voluntary annexation~~ may be included without the consent of the ~~owner(s)~~ owner to avoid creating an island or to create more uniform boundaries.

ITEM 3. Amend subrule 7.8(2) as follows:

7.8(2) Calculation of proportion of land area included without the consent of the owner(s).

a. Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner’s consent.

~~b. Territory owned by the state and territory within road right-of-way owned by the county, included pursuant to Iowa Code section 368.5, and railway right-of-way included in a voluntary annexation proposal pursuant to Iowa Code section 368.7(1) shall be included in the calculation of the total annexation area for purposes of calculating the amount of land area which may be included without the owner's consent. The area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land shall not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.~~

ITEM 4. Adopt the following new rule 263—7.12(368):

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) General rule. A request for board approval to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to 2010 Iowa Acts, House File 2376. Contiguous property may be combined within the same request.

7.12(2) Contents of petition. The petition under this rule shall be in substantially the same form as an application under Iowa Code section 368.7 and rule 263—7.2(368). Additionally, if the city council of either city conditioned approval of the petition upon an agreement entered into by the cities providing for the transition of property taxes or the sharing of property tax revenues from the property described in the petition, the agreement shall be filed with the board at the same time the approved petition is filed.

7.12(3) Initial board review. The board shall review each petition to sever real property from one city and to annex the same real property to another city in order to determine compliance with the requirements of Iowa Code section 368.7 and these rules. The board shall notify both cities and the real property owner(s) of the board's initial review of the severance and annexation petition. If the petition does not meet the requirements of Iowa Code section 368.7, the board may request additional information before making a final decision or may dismiss the petition. If the application is found to be in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities.

7.12(4) Public hearing. The board shall give notice of the public hearing in the same manner as notice of a public meeting under Iowa Code section 368.11, subsection 5. The board shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications.

7.12(5) Decision criteria. The board shall consider whether the request serves the public interest and may consider the criteria for approval of involuntary city development actions as set forth in Iowa Code sections 368.16 and 368.17. The board may approve or deny only the severance and annexation of the real property described in the petition. The board may approve the petition only if the board also approves any agreement entered into by the cities pursuant to 2010 Iowa Acts, House File 2376. The board shall not approve the petition if the severance and annexation creates an island.

7.12(6) Denial. If a petition is denied, the board shall issue an explanation for the denial. A copy of the explanation shall be provided to the clerk of each city involved in the severance and annexation and to any other party of record in the board's proceeding.

7.12(7) Approval. If a petition is approved, the board's order approving the severance and annexation is not subject to approval at an election. The board shall file and provide a copy of the order to the clerk of each city involved in the severance and annexation, the recorder of each county that contains a portion of any city or territory affected by the severance and annexation, and any other party of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the Iowa secretary of state and record with the recorder of each county that contains a portion of any city or territory involved copies of the proceedings, including the petition, any agreement between the cities, the board's order approving the petition, proof of service and publication of required notices, and any other material deemed by the board to be of primary importance to the proceeding. The board shall file a map and legal description with the Iowa department of transportation.

ITEM 5. Rescind rule 263—10.1(368) and adopt the following new rule in lieu thereof:

263—10.1(368) Election. If a petition or plan is approved, the board shall submit the proposal at an election held on a date specified in Iowa Code section 39.2, subsection 4, paragraph “a” or “b,” whichever is applicable, and the county commissioner of elections shall conduct the election. The board shall proceed with establishing a date for an election on the proposal regardless of appeal or applications filed pursuant to rule 263—9.13(368). Appeal of a committee decision does not stay the election. After the county commissioner of elections has certified the results to the board, the board shall serve and publish notice of the results as provided in Iowa Code section 362.3.

This rule is intended to implement Iowa Code section 368.19.